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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS  
EAST ST. LOUIS DIVISION  
CASE NO. 3:15-cv-1253-NJR-DGW

RYAN RUDDELL

**PLAINTIFF**

MARATHON PETROLEUM CO., LP,  
MARINE TRANSPORTATION

**DEFENDANT**

## VIDEOCONFERENCE DEPOSITION OF

CAPTAIN MICHAEL WAYNE SCOTT

Ashland, Kentucky  
July 13, 2016

Lisa Larson, FCRR, RPR  
Federal Certified Realtime Reporter

Page 2		Page 4
1	Pursuant to Notice, the videoconference	INDEX
2	deposition of CAPTAIN MICHAEL WAYNE SCOTT was taken	3 WITNESS: CAPTAIN MICHAEL WAYNE SCOTT
3	on behalf of the Plaintiff before Lisa Larson, FCRR,	4 EXAMINATION BY: Page
4	RPR, and Notary Public in and for the Commonwealth of	5 Mr. O'Bryan 5
5	Kentucky at Large, at Holiday Inn Express & Suites,	Mr. Raymond Massey 47
6	Meeting Room, 13131 Sloane Court, Ashland, Kentucky,	6 Mr. O'Bryan 66
7	on July 13, 2016, commencing at the hour of	7 REPORTER'S CERTIFICATE 76
8	10:02 a.m.	ERRATA SHEET 77
9	The deposition was taken for all purposes	8
10	permitted under the Federal Rules of Civil Procedure,	9
11	including use as evidence at the trial of this	EXHIBITS
12	matter.	10
13	11	12 NO. DESCRIPTION
14	13 Exhibit 1 Various documentation 75	14
15	related to incident and	15 (The original exhibit was attached to the original
16	referenced herein	transcript and a copy was provided to counsel)
17	18	16
18	19	17
19	20	18
20	21	19
21	22	20
22	23	21
23	24	22
24		23
		24
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1	APPEARANCES	1 CAPTAIN MICHAEL WAYNE SCOTT,
2	COUNSEL FOR THE PLAINTIFF:	2 the witness herein, having first been duly placed
3	(By videoconference)	3 under oath, was examined and testified as follows:
4	Dennis M. O'Bryan, Esq.	4 EXAMINATION
5	O'Bryan, Baun, Karamanian	5 BY MR. O'BRYAN:
6	401 South Old Woodward, Suite 463	6 Q Okay. Sir, could you please state your name.
7	Birmingham, Michigan 48009	7 A Michael Wayne Scott.
8	dob@obryanlaw.net	8 Q And you're employed by Marathon?
9	COUNSEL FOR THE DEFENDANT:	9 A Yes, sir.
10	Raymond L. Massey, Esq.	10 Q For how long?
11	Daniel L. Massey, Esq.	11 A Eight years.
12	THE MASSEY LAW FIRM, LLC	12 Q And you're a captain?
13	Two CityPlace Drive, Suite 200	13 A Yes, sir.
14	Saint Louis, Missouri 63141	14 Q And you were the captain of the boat on
15	ray@themasseylawfirm.com	15 August 27th of 2014 when Ryan Ruddell was --
16	ALSO PRESENT:	16 claimed an injury?
17	Tara M. Griffith, Esq.	17 A Yes, sir.
18	Marathon Petroleum Company, LP	18 Q What is the rule at Marathon with regard to
19	Adrian J. Pringle, Human Resources Consultant	19 working in thunderstorm conditions?
20	Marathon Petroleum Company, LP	20 A If there's any lightning we do not work. We shut
21		21 the -- shut everything down.
22		22 Q Why is that?
23		23 A Because we don't want our employees to get injured
24		or hurt.

	Page 6		Page 8
1	Q Was the loading facility shut down at any time on	1	to give him the incident report to look at
2	August 27th of 2014?	2	or?
3	A That, I don't know who -- if anybody was on the	3	MR. O'BRYAN: Yeah, that would be
4	dock loading up there or not.	4	fine.
5	Q There has been some testimony that the loading	5	MR. RAYMOND MASSEY: Okay. I'm
6	facility was shut down because of lightening.	6	giving him -- Captain, I'm giving you the
7	Do you know anything about that?	7	003, also 006, also 0643, which is a log, and
8	A No, sir.	8	0711, which is an employee statement, and
9	Q Okay. So what were the -- you knew that there was	9	also 339, 340, and 719 and 722.
10	bad weather coming on when the ship started that	10	All of these, you know, you
11	Mr. Ruddell was on, isn't that correct?	11	mention, Dennis, as ones you might be
12	A Yes, sir. I knew there was rain coming.	12	interested in. So I've given all of these to
13	Q Can you please repeat that.	13	the Captain, okay?
14	A Yes. I knew there was rain coming, yes.	14	MR. O'BRYAN: Okay.
15	Q Okay. Did you know that there were -- where did	15	BY MR. O'BRYAN:
16	you learn that from?	16	Q Have you reviewed any documents other than those
17	A By observing behind me and by my radar.	17	ones that were just handed to you by defense
18	Q And don't you get anything over the radio that you	18	counsel?
19	listen to with regard to that?	19	A There was a few others that I have seen other than
20	A You can listen to the Weather Channel, but the	20	these but not very many.
21	Weather Channel wasn't on. And, plus, I use apps	21	Q What were they?
22	on my phone. I can see what the weather is doing.	22	MR. O'BRYAN: Counsel, can you tell
23	Q And, okay, so what time was it about that	23	me?
24	Mr. Ruddell was -- this injury was noted to have	24	MR. RAYMOND MASSEY: If you
	Page 7		Page 9
1	taken place?	1	remember, Captain. I mean, if you don't
2	MR. RAYMOND MASSEY: Object to the	2	remember, that's fine.
3	form of the question. If you want to see	3	A I've seen ones where Isaac Perkins took a
4	incident reports or anything, you are welcome	4	deposition on Dane Haukedahl and Blake Ginn.
5	to do that. He didn't ask you about that,	5	Q Okay.
6	but you can if you need that.	6	MR. O'BRYAN: Ray, has he looked at
7	MR. O'BRYAN: Yeah. Feel free.	7	anything that we have not marked as exhibits.
8	Q Have you reviewed any documents to refresh your	8	MR. RAYMOND MASSEY: I don't think
9	recollection?	9	so, Dennis. I mean, nothing comes --
10	A Yes, sir.	10	Q Okay. You haven't given any other statements to
11	Q No, you have not?	11	anybody that -- outside of these?
12	A Yes, sir, I have.	12	MR. RAYMOND MASSEY: Yeah, I mean,
13	Q Oh, okay. Okay. What have you looked at?	13	he may have looked at the other statements --
14	A I don't understand what -- what the question --	14	or not statements, but whatever they are, of
15	what are you wanting to know? When he reported	15	the other witnesses that you are going to
16	the incident to me?	16	talk to today.
17	Q No. I moved on to another question. I asked what	17	MR. O'BRYAN: Right.
18	documents you have reviewed. I'll ask counsel.	18	Q But you haven't given any other statements, other
19	MR. O'BRYAN: Has he reviewed any	19	than --
20	documents that we have not already noted to	20	MR. RAYMOND MASSEY: No, no. No,
21	be potential exhibits?	21	there are no other statements to my
22	MR. RAYMOND MASSEY: No. He's	22	knowledge.
23	looked at some, at least, of the ones you	23	MR. O'BRYAN: Okay.
24	have mentioned, Dennis. And do you want me	24	BY MR. O'BRYAN:

		Page 10	Page 12
1	Q	So what was your understanding that the weather was going to be?	1 A Yes, sir.
2	A	That it was going to rain.	2 Q Okay. And thunder means lightening, correct?
3	Q	Well, it was going to get bad; isn't that a better description of it?	3 A Sometimes.
4	A	I can't determine if it's going to be bad that far away or not. I mean, I just knew the rain was coming.	4 MR. RAYMOND MASSEY: Object to the form of the question. Go ahead.
5	Q	Well, let's look at Exhibit 339. Tell me when you have got that in front of you.	5
6	MR. RAYMOND MASSEY:	Okay. You might ask him if he knows what that is. Because, I mean, that's -- I think you'll find that's not the Captain's writing. I think it is somebody else's. But go ahead.	6 Q Who said "sometimes"? Was that you or was that Ray?
7	BY MR. O'BRYAN:		8 A That was me.
8	Q	You were interviewed by somebody who was taking notes, correct?	9 Q Oh, okay. All right. So, now, at this -- at 5:30
9	A	Yes, sir.	10 you were tied off in the fleet, isn't that correct?
10	Q	And was that Mr. Isaac --	11
11	A	Perkins?	12 MR. RAYMOND MASSEY: I don't think that is correct.
12	Q	-- Perkins? Was that -- who that -- was that?	13 A No, sir, that is not correct.
13	A	Isaac Perkins. He was the HR guy at Marathon.	14 Q Or it says, "5:30 afternoon tie-off in fleet. Weather was about to get bad." What does that mean?
14	Q	All right. And he recorded that you said at 5:30	15 MR. RAYMOND MASSEY: Let me object to the form of the question. Now, I don't think you have established it. But as I indicated, these are not the Captain's notes. These are notes of somebody else who is not here to be deposed. But it was Mr. Perkins. So, I mean, he can look at logs and tell you
			Page 13
1		in the afternoon you were tied off in the fleet and the weather was about to get bad.	1 what he was doing if you are looking for what he was doing on the vessel.
2		Do you see that, the first line there, the first couple of lines?	2 MR. O'BRYAN: We have already established it was by Mr. Perkins.
3		(Witness reviews document)	3 BY MR. O'BRYAN:
4	A	Yes.	4 Q "5:30 afternoon tie-off in fleet. Weather was about to get bad." Would you agree with that statement?
5	Q	Okay. So does that refresh your recollection?	5 A No, sir. I was not tying off at 5:30.
6	A	Yes, sir.	6 Q What were you doing at 5:30?
7	Q	So the weather was about to get bad, correct?	7 MR. RAYMOND MASSEY: Feel free to look at the logs, Captain.
8	A	Yeah. It was fixing to go from not raining to raining, yes.	8 A At 5:30 I was at the wheelhouse, two miles from getting out of the canal, Chain of Rocks Canal. Ryan Ruddell, Dane Haukedahl, and Blake Ginn were in the wheelhouse going over shift starter, which was tying off in the fleet, and doing their stretching exercises.
9	Q	Well, I mean, you wouldn't consider a sprinkling, it is going to sprinkle bad, would you?	9 Q And you were more or less telling them what you guys were about to get into?
10	MR. RAYMOND MASSEY:	Let me object to the form of the question. It is argumentative. Go ahead, Captain.	10 A Yes, sir.
11	A	No. A sprinkling would not be as bad as a downpour, no.	11 Q And you told them that you had a big storm coming, isn't that correct?
12	Q	So you were expecting a downpour?	12 A I told them there was a storm coming, yes.
13	A	It was an afternoon thunderstorm, yeah. I was expecting it to rain, but I couldn't predict how heavy it was going to be.	
14	Q	Okay. So you knew there was going to be an afternoon thunderstorm?	

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1 Q	And you have got to hurry up and get there, wherever you were going, isn't that correct?	1 Q	So you would dispute -- or strike that.
2 A	No, sir. I never did tell them to hurry up.	2	So looking at these documents, what time did
3 Q	And did you tell them to hurry up and tie you in before the storm comes because it is really bad?	3	this incident occur with regard to Mr. Ruddell?
4 A	No, sir.	4 A	He has put on there 18:45, the time.
5 Q	Now, if you have this rule about not working under lightening conditions and you know -- you knew that a thunderstorm was coming, how come you just didn't sit until it passed?	5 Q	What time is that? 6:45?
6 A	We have worked in the rain before. Like I said, just because a thunderstorm, is does not mean there is going to be lightening associated with it.	6 A	Eighteen hundred? Yeah, that would be 6:45.
7 Q	Well, what is thunder in your opinion?	7	MR. RAYMOND MASSEY: Just so you
8 A	When there's a big clap of noise in the sky.	8	know, Dennis, I think the times, all the
9 Q	And there was lightening, though, in this storm, isn't that correct?	9	times refer to Eastern Standard Time. And
10 A	MR. RAYMOND MASSEY: Object to the form of the question. What time are you talking about, Dennis?	10	the only reason I mention that is because the Saint Louis area is on a different time zone than the time zone that's on these documents.
11 Q	I'm asking, when this storm hit was there lightening?	11	But you can ask the Captain, but I think all the times you will see are Eastern Standard Time as opposed to what the time was actually in Saint Louis. Do you understand what I am saying?
12 A	MR. RAYMOND MASSEY: But what time	12	MR. O'BRYAN: Right.
13 Q	are you talking about? Object to the form of the question.	13	BY MR. O'BRYAN:
14 A	I'm asking when this storm hit, was there lightening.	14	So, now, when are you -- when did you say that you observed the lightening?
15 Q	MR. RAYMOND MASSEY: I know. But I'm objecting to the term "hit." What are you talking about, "hit"? I mean, there was a thunderstorm in the Saint Louis area sometime on that day, before midnight, before it went to the next day, that's one thing. But you are not being specific about what time you are talking about. That's why it is vague and ambiguous.	15 A	After the crew members had returned to the boat, were already back on the boat.
16 Q	MR. O'BRYAN: Yeah. I can understand, you want to telegraph the answer to the witness.	16 Q	Now, how many times have you met with defense
17 Q	MR. RAYMOND MASSEY: Well, no. It is just --		
18 A	BY MR. O'BRYAN:		
19 Q	But did you observe lightening at any time on August 27th of 2014?		
20 A	Yes, sir. After the crew had returned back to the boat, after we tied off is when the lightening started to appear.		
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1 Q	MR. RAYMOND MASSEY: I know. But I'm objecting to the term "hit." What are you talking about, "hit"? I mean, there was a thunderstorm in the Saint Louis area sometime on that day, before midnight, before it went to the next day, that's one thing. But you are not being specific about what time you are talking about. That's why it is vague and ambiguous.	1 Q	counsel to discuss this event?
2 A	MR. O'BRYAN: Yeah. I can understand, you want to telegraph the answer to the witness.	2 A	I just met with him yesterday; it was the first time.
3 Q	MR. RAYMOND MASSEY: Well, no. It is just --	3 Q	Where at?
4 A	BY MR. O'BRYAN:	4 A	At -- at the office, Marathon office, in Catlettsburg.
5 Q	But did you observe lightening at any time on August 27th of 2014?	5 Q	For how long?
6 A	Yes, sir. After the crew had returned back to the boat, after we tied off is when the lightening started to appear.	6 A	It was about an hour and a half yesterday.
7 Q	MR. RAYMOND MASSEY: In-house lawyer for Marathon.	7 Q	Who else was in the room?
8 A	MR. RAYMOND MASSEY: Okay.	8 A	His son and our -- I can't think of her name at the moment.
9 Q	MR. RAYMOND MASSEY: In-house lawyer for Marathon.	9 Q	Who besides his son?
10 A	MR. RAYMOND MASSEY: Okay.	10 A	THE WITNESS: What is your name, again?
11 Q	MR. RAYMOND MASSEY: In-house lawyer for Marathon.	11 Q	MS. GRIFFITH: Tara Griffith.
12 A	MR. RAYMOND MASSEY: Okay.	12 A	Tara.
13 Q	MR. RAYMOND MASSEY: In-house lawyer for Marathon.	13 Q	MR. RAYMOND MASSEY: In-house lawyer for Marathon.
14 A	MR. RAYMOND MASSEY: Okay.	14 A	MR. O'BRYAN: Okay.
15 Q	So the thunderstorms were going on while you were conducting operations, isn't that correct, with Mr. Ruddell?	15 Q	So the thunderstorms were going on while you were conducting operations, isn't that correct, with Mr. Ruddell?
16 A	When we got up there, started the landing, that's	16 A	When we got up there, started the landing, that's

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1	when the rain hit.	1	All right. When I came on watch, I could look
2	Q So where is that in relation to 6:45?	2	behind me and over the city front of Saint Louis
3	A That would have probably been roughly about 18:30	3	you could see the black clouds. But where I was
4	or so.	4	at, there was no clouds.
5	Q Okay. So at what time are you saying you observed	5	And what time did you come on watch?
6	the lightening?	6	I came on watch at 5 o'clock.
7	A That, I couldn't specify what exact time that was.	7	And the rain was so heavy that you could not see
8	All I can tell you is the crew members were on the	8	the crew, isn't that correct?
9	boat, back on the boat.	9	MR. RAYMOND MASSEY: Object to the
10	Q Well, when they were conducting operations,	10	form of the question, as to what time are you
11	though, the thunderstorms had hit, isn't that	11	talking about?
12	correct?	12	MR. O'BRYAN: Let's say 6:45.
13	A Yes. It was raining when -- when they were out	13	A Or that's when you are saying that he hurt
14	there conducting operations.	14	himself, at 6:45?
15	Q Now, how bad was the rain?	15	Q Yeah.
16	A The rain started out light and then it became	16	I could not see him from there, even if it wasn't
17	heavy.	17	raining. Due to the configuration of the barge, I
18	Q And so, then, would you agree that at 6:45 or	18	cannot see the crew members from the wheelhouse.
19	thereabouts that the thunderstorms had hit by	19	Q Right. But the rain coming down was of such a
20	that time?	20	severity that it impeded your vision, too, isn't
21	MR. RAYMOND MASSEY: Object to the	21	that correct?
22	use of the term "thunderstorms." It is vague	22	A Yes, sir.
23	and ambiguous as to what you are talking	23	Q And what about the videos? What videos were
24	about. And "hit" is vague and ambiguous as	24	pulled off the boat?
	Page 19		Page 21
1	well. I object on those grounds.	1	I have no clue if any videos were pulled off. I
2	Go ahead, Captain, if you can	2	have no access to do any of that.
3	answer.	3	Q Okay. Well, look at 3:40, the second page of
4	A Would you repeat the question again.	4	notes by Isaac Perkins. Do you see the last line
5	Q Would you agree that by 6:45 the thunderstorms had	5	that he wrote down there?
6	hit?	6	(Witness reviews document)
7	MR. RAYMOND MASSEY: The same	7	A Yes, sir.
8	objection. Go ahead, Captain.	8	Q "Pulled videos at Mike of the boat." Do you see
9	A Yes, sir. I would say that the storm had hit at	9	that?
10	that time, yes.	10	A Yes, sir.
11	Q Well, I'm saying thunderstorm.	11	Q What videos are there on the boat?
12	A Yes, sir, thunderstorm.	12	A We have cameras stationed all around the boat
13	Q Okay. And it progressively got worst once it	13	which are recording all the time.
14	started?	14	Q Okay. And they were -- and what is the purpose of
15	A Yes. It -- like I said, it started out slowly, a	15	that?
16	light rain, and then it progressed into a heavy	16	A The purpose of that is I can use them to help
17	rain.	17	navigate when trying to come in to docks. Like
18	Q What did the sky look like that you could tell by	18	backing in to Garyville, I can see how close I'm
19	the appearance of it that there were thunderstorms	19	getting to the pylons and stuff.
20	coming?	20	Q I'm talking about, though, recording videos, I
21	A At what time was you wanting to know about this?	21	mean, to have a video record.
22	Q I thought you indicated earlier that you could	22	What is the purpose of having the video
23	tell that there was bad weather coming by looking	23	record?
24	at the sky.	24	A Marathon uses that to record in case there's ever

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1	any accidents/incidences with other vessels or	1	Ruddell got off. Mike's, Inc. has videos at
2	anything --	2	their facility. What they talked about is
3	Q Okay.	3	getting Mike's videos that would show Ruddell
4	A -- so we would have them.	4	getting off the boat, that would show if he,
5	Q So there was an accident reported that occurred on	5	you know, if he was limping around or had any
6	that day by Mr. Ruddell, isn't that correct?	6	injury or whatever. That is what that is
7	A On that day he did not report nothing to me.	7	referring to. It is referring to securing
8	Q Well, the next day.	8	Mike's, Inc.'s video, if they have any, and
9	A The following day, yes, it was brought to my	9	we know that they customarily have recordings
10	attention.	10	at their facility. That's what that refers
11	Q Okay. And the video -- okay. So that's the type	11	to.
12	of accident that typically you would retain the	12	MR. O'BRYAN: Well, the videos on
13	video for, correct?	13	the boat --
14	A I have no way of retaining the video. That's	14	MR. RAYMOND MASSEY: They weren't
15	beyond my control.	15	pulled off, to my knowledge. But go ahead
16	Q Well, where did they go when they were -- did you	16	and ask anything you want. I just wanted to
17	know that they had been pulled off at the time?	17	clear up. I know you were concentrating on
18	A Like I said, I couldn't tell you because I don't	18	that line there. And that's what that line
19	know. I'm -- I don't have access to do that, and	19	refers to, is go to Mike's and see if they
20	every so many days that stuff is recorded over.	20	have got any videos of Ruddell getting off
21	MR. RAYMOND MASSEY: Just so you	21	the boat and, if so, pull them. I think.
22	know, Dennis, it is kind of confusing, but	22	But ask the Captain.
23	there are different videos they are talking	23	BY MR. O'BRYAN:
24	about there on that line that you just	24	Q The videos that are on the boat record events as
	Page 23		Page 25
1	referred to. That's talking about Mike's	1	occurring out on the tow, isn't that correct?
2	videos, Mike's, Inc. videos. Do you	2	A There are two cameras that record out on the tow
3	understand that or not?	3	from the wheelhouse, yes.
4	MR. O'BRYAN: No, I don't.	4	Q Okay. So what I am asking about is the video that
5	MR. RAYMOND MASSEY: Well, you	5	recorded the events as they were occurring at or
6	might ask the Captain, if you want to know;	6	about 6:25 on August 14th of -- or August 27th of
7	if you don't, that's fine. You can leave it	7	2014. What about those videos?
8	kind of confused. But...	8	A Like I said, I have no control over them videos.
9	Q Well, I mean, what does this "Mike" mean?	9	That's up to the office to -- to pull them videos,
10	A Mike's is a shipyard up there at Wood River, and	10	if they wanted to pull them. Other than that, I
11	they have video surveillance on their docks.	11	have no control. I cannot access them or nothing.
12	Q Well, their videos would be on your boat?	12	Q Were they pulled?
13	A No, sir.	13	A Like, again, I -- I do not know, sir.
14	Q Well, it says, "Pulled videos at Mike's off the	14	Q Does someone have to come on the boat to pull them
15	boat," correct?	15	or is it internet or something?
16	A Yeah. But they were referring to Mike's shipyard.	16	A They could pull them from the office. They have
17	Q So "pulled the videos on the boat off the boat at	17	-- we have satellite.
18	Mike's" correct?	18	Q And they could pull them off the boat, too?
19	A This is -- you're confusing me.	19	A Yes. They can access the videos from the office
20	MR. RAYMOND MASSEY: Do you want me	20	that's on the boat.
21	to tell you, Dennis, to speed it along?	21	Q No. I'm saying, is there like a disc on the boat
22	MR. O'BRYAN: Sure.	22	or a VHS or anything?
23	MR. RAYMOND MASSEY: Mike's, Inc.	23	A It's more like a -- like on an airplane, you know,
24	has a facility there, and that's where	24	they have the, what is it called, the black box or

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1	whatever. Ours is called the blue box.	1	the weather channels on the radio -- VHS radios.
2	Basically, it's, I guess, a hard drive on there	2	Q And what did you do on that day --
3	that stores that stuff.	3	A Observed --
4	Q Okay. And was that box ever removed?	4	Q -- that you recall?
5	A No, sir.	5	A For one, I observed behind me. And, second, I
6	Q So you don't know anything about these	6	used one of the apps on my phone which showed the
7	forward-looking videos that would have been made	7	-- the storm over Saint Louis.
8	on or about August 27th, 2014 at 6:45 p.m.,	8	Q And did it say lightening?
9	correct?	9	A No, sir.
10	A All I can tell you is the cameras were recording.	10	Q What did it say about the storm, if you recall?
11	And after -- what happens to the videos after	11	A It was a radar app, is what I looked at.
12	that, I have no idea.	12	Q So you didn't look at -- did you look at anything
13	Q So when is it you say -- I'm sorry. I know you	13	that would have indicated lightening?
14	have already answered.	14	A No, sir. I didn't look at nothing that would
15	But when is it you say you first saw the	15	predict if there was lightening.
16	lightening?	16	Q I'm saying -- okay. You looked at the app and
17	A After the crew members had returned to the boat.	17	your radar and the sky, correct?
18	Q And what did you do then?	18	A Yes.
19	A We were already tied off and everybody was inside.	19	Q And would your app indicate just thunderstorms or
20	Q Let's look at number 729 for a minute.	20	would it indicate lightening also?
21	MR. RAYMOND MASSEY: Let's see.	21	A The app I used was just the radar app showing the
22	What is 729, Dennis?	22	thunderstorm.
23	MR. O'BRYAN: It is the official	23	Q Oh. So you can -- it is more or less a visual
24	accident report.	24	thing, you see the dark clouds on an app?
	Page 27		Page 29
1	MR. DANIEL MASSEY: It is the same	1	A It's like what you would see on TV when they show
2	as six, I believe.	2	the weather, showing the rain, where it is at.
3	MR. RAYMOND MASSEY: The same as	3	Q Do you know the name of that app?
4	six, is that right?	4	MR. RAYMOND MASSEY: The Captain is
5	MR. O'BRYAN: Yeah, probably.	5	pulling out his phone with an app on it, I
6	THE WITNESS: That is his right	6	guess.
7	there (indicating).	7	(Witness reviews cellular phone)
8	MR. RAYMOND MASSEY: Okay. He's	8	A NOAA Weather Radar, N-O-A-A.
9	got -- the Captain has 06 in front of him.	9	Q How do you spell that?
10	That may be a duplicate. But it is titled up	10	A N-O-A-A Weather Radar.
11	at the top "MPC and Contractor Occupational	11	Q So you didn't look at anything that would say --
12	Injury/Illness Incident Report" signed by the	12	well, so you don't consider thunderstorms to be
13	Captain. Is that what you wanted?	13	synonymous with lightening storms?
14	MR. O'BRYAN: Yeah.	14	A They can be. Yes, they can be.
15	MR. RAYMOND MASSEY: Okay. That's	15	Q But you didn't know one way or the other whether
16	in front of him.	16	this storm or this weather coming on was going to
17	BY MR. O'BRYAN:	17	be a lightening storm?
18	Q Before we get to that. Now, when you came on	18	A No, sir.
19	watch, tell me all of the ways that are available	19	Q Now, are there apps that tell you whether there is
20	to you to become knowledgeable of upcoming weather	20	going to be lightening coming?
21	besides looking at the sky.	21	A I'm sure there is apps out there that do that, but
22	A I have a radar which I can adjust to mileage. I	22	I don't have it.
23	have like four apps on my phone where I can watch	23	Q Okay. Let's look at that injury/illness/incident
24	the weather. And if I want to, I can also access	24	report.

	Page 30		Page 32
1	(Witness reviews document)	1	I can't tell you if he took the wire off correctly
2	Q You signed that, correct?	2	or not. Like I said, I could not see from my
3	A Yes, sir. That's my signature at the bottom.	3	vantage point.
4	Q Okay.	4	Q Well, you criticized his lifting in number 4,
5	MR. RAYMOND MASSEY: And just for	5	isn't that correct, where you filled that in?
6	identification purposes, they are referring	6	A Yes, sir.
7	to Bates stamp 06.	7	Q But you didn't see him lifting; is that not
8	Q And what writing is yours?	8	correct?
9	A The writing at the bottom, my name, Captain. Then	9	A That day I did not see him, no.
10	right above it proper lifting, bend with knees.	10	Q So upon what did you base this statement that
11	Line 15 was Dane Haukedahl and Anthony Ginn.	11	proper lifting would prevent a recurrence?
12	And line 9, that's my writing.	12	A I based that on from what he told me and what the
13	Q And it seems that Ryan Ruddell also signed that	13	first mate told me, that he was bent over with his
14	document. Or I don't know if he signed it.	14	back. And it is policy that we do proper lifting
15	But it says "completed by" in number 17, correct?	15	and bending by the knees.
16	A Yes. That's his handwriting on 17.	16	Q Okay. What did he tell you with regard to that?
17	Q Were you there when he was filling it out?	17	A Did who what tell me, Ryan or Dane?
18	A Yes, sir.	18	Q Ryan. Ryan. Or Ryan. Ryan.
19	Q And were you discussing it with him at the time?	19	A Ryan just told me he hurt his back by bending
20	A We were discussing his injury, yes, sir.	20	over.
21	Q Okay. So you have got the place the incident	21	Q Did he tell you how he was bending over?
22	occurred "first coupling at L&C fleet." How did	22	A No, sir.
23	you come upon that information?	23	Q Okay. What about number 13? What did he tell you
24	A From what he had told me.	24	the types of hurt or soreness he had?
	Page 31		Page 33
1	Q Okay. And number 11, where he filled that in,	1	A He pretty much told me what he wrote there, about
2	"took wire off timber head ( fleeting barges ),"	2	his groin area hurting, I can't hardly read this,
3	did you discuss that with him?	3	shooting pain down the front of his leg. That's
4	A He just told me that he took the wire off a timber	4	what he told me.
5	head.	5	Q And prior to that time had you noticed any
6	Q And number 12, it says, "took wire off timber head	6	abnormal behavior of Ryan with regard to his
7	and handed it to the mate." Did you discuss that	7	ability to work and move and get around?
8	with him?	8	A No, sir.
9	A Yes. He discussed that with me, yes.	9	Q Now, he -- let's look at 003.
10	Q Was there anything unusual about how he did that,	10	(Witness reviews document)
11	in your opinion?	11	Q Now, that's the crew member's report of injury,
12	MR. RAYMOND MASSEY: Object to the	12	isn't that correct?
13	form of the question. There was no	13	A Yes, sir. That's Ryan's, yes.
14	foundation laid that the Captain knows that.	14	Q And so would you agree or disagree or not know
15	A I couldn't see that from my perspective. From my	15	whether or not lightening was observable at
16	-- from the wheelhouse, I could not see.	16	6:45 p.m.?
17	Q So you don't have any opinion one way or the other	17	A At 6:45 there was no lightening.
18	whether he did that correctly?	18	Q What time did they come back up to the wheelhouse?
19	A I have --	19	A They came back to the boat, I don't know exact
20	MR. RAYMOND MASSEY: Object to the	20	time, maybe about 6:55, somewhere in that
21	form of the question. He said he didn't see	21	ballpark.
22	anything. I don't know that you have asked a	22	Q Oh. So you are saying that you saw lightening at
23	foundation to ask for an opinion. Go ahead,	23	or about 6:55 but not at 6:45?
24	sir.	24	MR. RAYMOND MASSEY: Object to the

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1	form of the question. You've already asked	1	You would have to request on our policies what our
2	and answered that. You have already asked	2	policy is for working in adverse weather.
3	the question and the Captain has already	3	Q And what does it say, if you recall?
4	answered that no lightening was observable	4	A I couldn't tell you exactly word for word what it
5	until they were in the boat.	5	says without being able to look at it.
6	MR. O'BRYAN: I'm just --	6	Q What is your best recollection?
7	Q You can answer.	7	A During lightening storms we don't work; there's
8	A The crew members were back on the boat during the	8	other things in there, icy conditions.
9	lightening, which, give or take, was around 6:55	9	MR. O'BRYAN: Would you happen to
10	or so.	10	have -- okay. Off the record.
11	Q All right. And so on 003, which is Mr. Ruddell's	11	(Discussion held off the record)
12	accident report, you would not dispute his -- what	12	BY MR. O'BRYAN:
13	he wrote in the weather conditions of heavy rain	13	Q Irrespective, Captain, it is your recollection
14	and thunderstorms, correct?	14	that there is a written rule regarding working in
15	A In what -- what form are you looking at?	15	lightening conditions, correct?
16	Q 003.	16	A It's been a standard rule since I've worked here
17	A I see no weather. Oh. Heavy rain.	17	at Marathon. We do not work in the lightening.
18	Q It is about five lines down.	18	Q Okay. Now, let's get back for a moment to this
19	A Yeah, "weather conditions." Now, what was your	19	injury/illness/incident report. I think it was
20	question, again?	20	00, I have, 729 but I forget what your number is.
21	Q You would not disagree with his description of	21	MR. RAYMOND MASSEY: I think it is
22	heavy rain and thunderstorms, isn't that correct?	22	06, I think is what you are mentioning.
23	A No. I wouldn't disagree, no.	23	MR. O'BRYAN: Okay.
24	Q So in terms of thunderstorms versus lightening	24	BY MR. O'BRYAN:
	Page 35		Page 37
1	storms, you don't -- am I correct that you don't	1	Q Now, this proper lifting with the knees, so tell
2	consider it to be a lightening situation -- or,	2	us about that, that entry you put to prevent a
3	no, strike that.	3	recurrence.
4	Am I correct that you don't consider a	4	MR. RAYMOND MASSEY: What do you
5	thunderstorm to be a lightening situation unless	5	mean by "tell us about that"? It is just
6	you visibly observe the lightening?	6	vague and ambiguous. Do you mean --
7	MR. RAYMOND MASSEY: Object to the	7	Q What does that mean?
8	form of the question. It is vague and	8	MR. RAYMOND MASSEY: -- have him
9	ambiguous. Go ahead, Captain.	9	explain the rule or what?
10	A In my experience on the river of 32 years,	10	MR. O'BRYAN: Yeah, that would be
11	thunderstorms can be nothing but rain, then it	11	good.
12	could also have association with lightening.	12	MR. RAYMOND MASSEY: All right.
13	Q Well, is there anything different in your mind	13	A There are training. He has to do training every
14	between heavy rain and -- heavy rainstorm and	14	year. We all have to do training. And there's a
15	thunderstorm?	15	video that you watch that teaches you, tells you
16	A A thunderstorm can be heavy rain with a -- the	16	how to properly lift, how to do it and not to do
17	sound of thunder -- I mean, thunder to it and	17	it.
18	still be no lightening.	18	Q What were the wind conditions at the time of this
19	Q Now, where is this rule that you made reference to	19	incident?
20	earlier that you shouldn't be working in	20	A Best to my recollection -- the best I can
21	lightening storms?	21	remember, it was maybe like a five mile an hour
22	A That's in our policies.	22	wind, according to my wind meter.
23	Q And if I were to make a request for that, I mean,	23	Q How many miles?
24	what would I ask for? Your policy book or?	24	A Five.

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1	Q	Was it a situation where the rain was blowing sideways?	1 A (Witness so complies).
2	A	No, sir. It was coming straight down.	2 Q So which entry would be closest in time to this
3	Q	So you're saying that the electrical storm aspect of this period of time did not become apparent to you until after Mr. Ruddell and the other crew members were back in the wheelhouse?	3 incident at 6:45?
4	MR. RAYMOND MASSEY:	Object to the form of the question. It is vague and ambiguous as you've phrased it. Go ahead, Captain.	4 A The 16:40 traffic delay.
5	A	The crew members were back safely on board when the lightening actually started getting closer to the area.	5 Q Okay. Where were you when you came on watch?
6	Q	Now, when you got off watch on that day and you went down to the galley, you smelled Bengay at that time?	6 A When I come --
7	A	Yes, sir.	7 MR. RAYMOND MASSEY: Object to the form of the question. It has already been asked and answered. But go ahead, Captain.
8	Q	And did you look into that at all --	8 A I relieved the pilot, I believe it was, 11:05. I was below the Chain of Rocks Canal bridges.
9	A	No, sir.	9 Q Were you tied off or?
10	Q	-- like who is wearing -- who is using Bengay or anything like that?	10 A No, sir. I was proceeded northbound.
11	A	No, sir.	11 Q And then you had to go through a lock?
12	Q	But that was kind of -- you noticed it --	12 A No, sir. I was above the lock.
13	MR. RAYMOND MASSEY:	Object to the form of the question. It is vague and ambiguous as you've phrased it. Go ahead, Captain.	13 Q Did you note the lock delay?
14	A	The pilot incurred lock delay, yes.	14 A The pilot locked at 15:30.
15	Q	Okay. And then you had to go through the lock at 15:30, isn't that correct?	15 Q Well, which entries -- what mile numbers on this log sheet that you had the sticks?
16	A	The pilot locked at 15:30.	16 Q I came on at 17:05.
17	Q	Oh, okay.	17 Q Oh, okay.
		Page 39	Page 41
1	A	Yes. I could smell it.	1 A Yeah. I looked at the noon position instead of the evening.
2	Q	-- correct?	2 Q Okay. So what does that say for "description of operation" at 17:05?
3	A	Yes. I could smell it.	3 A That's when I did watch change protocol with the pilot and relieved him.
4	Q	But you didn't ask around, all right. And the reason why you did not observe this incident is because it was raining so hard at the time, isn't that correct?	4 Q And is that when you had the discussion with the crew members about bad weather was coming, et cetera?
5	A	It was a combination of the rain and my vision due to the barge.	5 A That was at 17:30.
6	Q	But in your witness statement reporting to your company you just said you didn't see what was going on because it was raining hard, isn't that correct?	6 Q Okay. Was that noted anywhere on a document or it is just your recollection?
7	(Witness reviews document)		7 A We have a shift starter log that's noted on there when the shift starter took place.
8	MR. RAYMOND MASSEY:	Do you want him to look at something?	8 Q Oh. Well, what else is on -- that is a shift starter log?
9	MR. O'BRYAN:	Yeah. Look at number 11.	9 MR. RAYMOND MASSEY: Which one is that?
10	MR. RAYMOND MASSEY:	Number 11?	10 Q Is that what it is called?
11	MR. O'BRYAN:	Yeah.	11 A Yes. It shows that we did -- they did a shift starter before coming on watch. We discussed what was fixing to take place during that time.
12	A	Yes, it was raining hard. But also, like I said, due to the configuration of the barge I could not see the crew members.	12 Q And what type of entries are put in that shift starter log?
13	Q	Okay. Let's look at the log, number 643.	13 Q Okay.

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1	A	It would have my name on it, Dane's name on it, and what shift starter was performed, which would have been fleeting tow.	1	(Witness reviews document)	1
2	Q	So do you note like bad weather coming or anything like that?	2	MR. RAYMOND MASSEY: And I'll show	2
3	A	Weather was discussed, yes.	3	him 8/29 as well, which is Document 641.	3
4	Q	Would it have been, you know, put down on the log?	4	(Witness reviews document)	4
5	A	No, sir.	5	MR. RAYMOND MASSEY: And I'll show	5
6		MR. O'BRYAN: Off the record.	6	him 639, which is -- let's see. Actually,	6
7		(Discussion held off the record)	7	I'll show him 640, which is 8/30, that's	7
8		BY MR. O'BRYAN:	8	August 30th. And then I'll show him 639,	8
9		Okay. So between -- so you have got mile 190,	9	which is August 31.	9
10		196 -- and 196 noted in your entries on that log	10	So in summary I'm showing the	10
11		sheet, correct?	11	Captain the log for 8/28, 8/29, 8/30, 8/31.	11
12	A	Yes, sir.	12	That's for the next four days, Dennis, all	12
13	Q	Now, between what two points in time would the	13	right? Is that what you want?	13
14		report of the incident have occurred?	14	MR. O'BRYAN: All right. Yeah.	14
15	A	18:45 is when the -- he assumed that it happened.	15	MR. RAYMOND MASSEY: And your	15
16	Q	So you were at the fleet at that time?	16	question was, when did they begin to load,	16
17	A	Yes, sir.	17	right?	17
18	Q	And when did you eventually load?	18	MR. O'BRYAN: Right.	18
19		MR. RAYMOND MASSEY: I think you	19	THE WITNESS: That's not on any of	19
20		cut out. What was that question?	20	these dates.	20
21	A	You will have to repeat the question. You are	21	MR. RAYMOND MASSEY: Okay. Did you	21
22		kind of cutting in.	22	hear what he said? He said it is not on any	22
23	Q	Okay. I'm sorry. At 18:30 you put down "stand by	23	of these dates.	23
24		the load," isn't that correct?	24	BY MR. O'BRYAN:	24
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1	Q	So you didn't load for a number of days after?	1	Q	So you didn't load for a number of days after?
2	A	Yes, sir. It was several days after.	2	A	Yes, sir. It was several days after.
3	Q	So did you just stay there at the fleet for a	3	Q	So did you just stay there at the fleet for a
4	A	number of days?	4	A	number of days?
5	Q	We would run up to Mike's every now and then, once	5	W	We would run up to Mike's every now and then, once
6	A	to, you know, get supplies and groceries and stuff	6	to, you know, get supplies and groceries and stuff	6
7	Q	like that, I believe. Or it looks like -- no.	7	like that, I believe. Or it looks like -- no.	7
8	A	We sit there, according to my logs here that I am	8	We sit there, according to my logs here that I am	8
9		looking at, we sit there -- sit there in the fleet	9	looking at, we sit there -- sit there in the fleet	9
10		for them days.	10	for them days.	10
11		MR. RAYMOND MASSEY: Actually, I'm	11	MR. RAYMOND MASSEY: Actually, I'm	11
12		showing him the next -- if you want me to,	12	showing him the next -- if you want me to,	12
13		I'll show him the next couple of days. Do	13	I'll show him the next couple of days. Do	13
14		you want him to do that? Dennis, do you want	14	you want him to do that? Dennis, do you want	14
15		him --	15	him --	15
16		MR. O'BRYAN: Yeah, that would be	16	MR. O'BRYAN: Yeah, that would be	16
17		all right.	17	all right.	17
18		MR. RAYMOND MASSEY: Okay. Well,	18	MR. RAYMOND MASSEY: Okay. Well,	18
19		I'm just trying to move it along.	19	I'm just trying to move it along.	19
20		I'm showing him also logs for	20	I'm showing him also logs for	20
21		September 1 and September 2, and that's	21	September 1 and September 2, and that's	21
22		document Bates stamp 638 and 637.	22	document Bates stamp 638 and 637.	22
23		And so in summary we've now got the	23	And so in summary we've now got the	23
24		logs from 8/28, 8/29, 8/30, 8/31, 9/1, and	24	logs from 8/28, 8/29, 8/30, 8/31, 9/1, and	24

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1	9/2.		1	A	Yes, sir.
2	A	We're still just standing by waiting to load, even to them dates.	2	Q	By that time had the barges already been tied off in the fleet there at Lewis and Clark?
3			3		
4	Q	Okay. So, now, I know that at the bottom of that log sheet, I'm looking at 643 for 8/27, it has an entry for weather. But that apparently is just for delays, is that correct?	4	A	Yes. They had already been secured.
5			5	Q	Looking at the logs that you have looked at, over
6			6		the next several days did the motor vessel
7			7		Nashville and the barges stay generally at that
8		(Witness reviews document)	8		facility while they were waiting to be loaded?
9	A	Which log is that, again, sir?	9	A	Yes, sir.
10	Q	643.	10	Q	At any time during the operation, where the crew
11		MR. RAYMOND MASSEY: That's the date of 8/27. What is your question?	11		members were out on the tow, did you or anyone
12			12		tell any of the crew to hurry?
13	A	There is no weather delay on there.	13	A	No, sir.
14	Q	Right. Is there anywhere where you record the weather? Did you record electrical storms anywhere?	14	Q	Do you and the company have a policy against hurrying out on the deck?
15			15		
16			16	A	Our policy is safety first. We do not make
17	A	No, sir.	17		anybody rush because we want to make sure
18	Q	If you were to record such a thing, where, if anywhere, would you have recorded it?	18		everybody stays safe.
19			19	Q	In the rain, if it's raining, is there a custom
20		MR. RAYMOND MASSEY: Object to the form of the question. I think he's answered	20		and practice as far as whether or not you hurry or
21		they don't record it, but. It has been asked	21		not or even slow down under those circumstances?
22		and answered. Go ahead, Captain.	22	A	Everybody has the right to say "stop" if they feel
23			23		that things are unsafe, including me and, plus, my
24	A	We don't record the weather other than if we have	24		crew.
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1		to stop due to the weather.	1	Q	All right. If, for example, any crew member saw
2	Q	Yeah. Do you record things like that or not really?	2		lightening or were nervous about any lightening
3			3		conditions in the area, can any of the crew
4	A	If it's a heavy rainstorm, we'll record it. We'll have to stop due to visibility. We'll record that or a heavy snowstorm.	4		members stop operations immediately?
5			5	A	Yes, sir.
6			6	Q	Did anything like that occur during the time any
7	Q	Okay. And at the time of this incident you had a heavy rainstorm that affected your visibility, isn't that correct, at 6:45?	7		of the crew members were out on the vessels at the
8			8		time of this incident?
9			9	A	No, sir.
10	A	Yes.	10	Q	At the time of this incident -- strike that.
11		MR. O'BRYAN: All right. That's all I have for you, Captain.	11		How long did this entire operation take from
12			12		the time your vessel and its tow arrived at Lewis
13		MR. RAYMOND MASSEY: Captain, I have some questions. I'll be brief.	13		and Clark until the crew members were back inside
14			14		the boat?
15		EXAMINATION	15	A	Roughly about 25 to 30 minutes.
16	BY MR. RAYMOND MASSEY:		16	Q	And when they -- when the crew members first went
17	Q	So that there is no confusion, Captain, because it was asked a number of different times, while the crew members were out tying off the barges at the fleet, was there any lightening at that time, sir?	17		out on deck, was there any rain at that time?
18			18	A	No, sir, there was none.
19			19	Q	But during the process of tying off the barges to
20			20		the fleet it began to rain?
21	A	No, sir.	21	A	Yes, sir. When we first started catching the
22	Q	Lightening was observed later in the day after the crew members came back to the boat, is that true, sir?	22		first head wire, it started to rain.
23			23	Q	All right. There was some questions about the
24			24		vessel video and the fact that you have some video

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1	cameras on the boat itself. And you talked about	1	you or mention that the conditions were such that
2	not being able to see the crew members.	2	they wanted to quit or they were coming in or
3	If you look from the head of the tow back to	3	anything like that?
4	the next coupling, is that where they were doing	4	A No, sir.
5	the work at the time -- at the last coupling or	5	Q And had they wanted to do that could all of them
6	not? That was a bad question. Let me rephrase	6	freely communicate to you and then come in?
7	the question.	7	A Yes, sir.
8	How many couplings would you say that you had	8	Q After the rain started and even up to the time
9	in this tow of six barges?	9	when it was raining the hardest, I think you
10	A Two.	10	indicated the rain was coming down and was not
11	Q And if you go from the front or the bow of the tow	11	blowing sideways?
12	backwards, the first coupling would be between the	12	A No. It was coming straight down.
13	first barge and the second barge, is that true?	13	Q And how would you judge the amount of rain? If
14	A Yes.	14	you use like an inch an hour, a half inch an hour,
15	Q And the second coupling would be between the	15	or whatever, would you be able to give us an
16	second barge and the third barge --	16	estimate of your thoughts?
17	A Yes, sir.	17	A At the heaviest -- at the heaviest point?
18	Q -- back towards the boat?	18	Q Yes, sir, at the heaviest points.
19	A Yes, sir.	19	A I would say probably about an inch an hour.
20	Q The last coupling that the crew was involved in	20	Q And were any of the crew members out there, our
21	would have been coupling number two?	21	crew members or the Lewis and Clark crew members,
22	A Yes.	22	were any of them wearing any kind of rain gear?
23	Q Now, at the time the Nashville crew was working	23	A Not that I can remember, no.
24	out on the barges there was another crew working	24	Q Is that customary, not to wear rain gear in the
	Page 51		Page 53
1	out there with them, is that true?	1	summer in the Saint Louis area if it is raining
2	A Yes, sir. The tug service there, their guys were	2	like that?
3	out there.	3	A That's -- that's their discretion if they want to
4	MR. O'BRYAN: Ray?	4	wear it. I mean...
5	MR. RAYMOND MASSEY: I'm sorry?	5	Q All right. We had rain gear available if anybody
6	MR. O'BRYAN: Ray, can we just take	6	wanted to use it?
7	a short break? I have to go use the	7	A Yes, sir.
8	restroom.	8	Q Now, looking at the logs that you have, it appears
9	MR. RAYMOND MASSEY: Okay. That's	9	that after the barges were tied off that you all
10	fine. Taking a break.	10	generally remained in that same location at
11	(11:02 a.m. BREAK 11:09 a.m.)	11	Lewis and Clark for at least four or five or
12	BY MR. RAYMOND MASSEY:	12	six days after you all landed, is that true?
13	Q Captain, when the, I'll use the phrase, tying off	13	A Yes, sir.
14	procedure was being done at Lewis and Clark and	14	Q And during that time the barges, when they were
15	the Lewis and Clark people were there and our deck	15	ready to be loaded, would be taken out two at a
16	crew were there, did all of the people have	16	time and taken to the facility to be loaded?
17	communication devices of one sort or another?	17	A Yes, sir.
18	A Yes. They all had walkie-talkies, VHS.	18	Q But it was almost a week before you all left that
19	Q So that they could communicate with you, that is	19	area after being loaded at least?
20	your crew members, and so that the Lewis and Clark	20	A Yes, sir.
21	people could communicate with their wheelhouse?	21	Q So there was no hurrying or particular reason to
22	A Yes, sir.	22	be in a hurry to do anything, was there?
23	Q At any time did any of our crew members or any	23	A No, sir.
24	crew members, to your knowledge, say anything to	24	Q Now, after this incident on the 27th, the next day

	Page 54		Page 56
1	on the 28th the incident was reported to you as	1	I do not recall him saying that he bent by his
2	the Captain?	2	waist.
3	A Yes.	3	Q Okay. You indicated, I think, that it has been
4	Q At any time when you talked to Mr. Ruddell, or	4	your policy and Marathon's policy never to work in
5	Mr. Ruddell (pronouncing), did he indicate to you	5	lightening for as long as you have been with the
6	that he had any difficulties with wires of any	6	company?
7	sort?	7	A Yes, sir. And that's just common, what they call,
8	A No, sir.	8	good seamanship practice.
9	Q Did he indicate that weather played any part in	9	Q All right. You are not saying that that is
10	causing or contributing to cause his injury in any	10	written down in writing someplace in a manual or
11	kind of way?	11	something; you are not saying that?
12	A No, sir.	12	A No, sir.
13	Q Did he ever indicate that he tripped or slipped or	13	Q But there are some references in some policy
14	fell in any kind of way?	14	manuals dealing with discretion to use additional
15	A No, sir.	15	people, et cetera, under certain weather
16	Q Did he ever indicate to you that he complained of	16	conditions, is that right?
17	hurrying or the circumstances under which they	17	A Yes, sir.
18	were doing their work at all?	18	MR. O'BRYAN: I'm going to object
19	A No, sir.	19	under Rule 1001, the best evidence rule,
20	Q Now, you indicated that you wrote down something	20	because I have not seen this thing that you
21	about not bending his knees.	21	are talking about.
22	Did Dane, the mate, indicate that he had seen	22	MR. RAYMOND MASSEY: Okay. I'll
23	Mr. Ruddell hand him the wire?	23	rephrase the question.
24	A Yes. He had seen him bend over at the waist.	24	Q Assuming, Captain, that there is an area in the
	Page 55		Page 57
1	Q And bending over at the waist, is that a violation	1	policies that say something to the effect --
2	of a safety rule at Marathon?	2	MR. O'BRYAN: Why don't you give it
3	A Yes, sir.	3	to him and so I can look at it, too.
4	Q And why is that, sir?	4	MR. RAYMOND MASSEY: Hold the
5	A Because you can hurt your back that way.	5	thought.
6	Q What are you supposed to do?	6	Q -- "Exception: In certain circumstances (for
7	A Bend with your knees.	7	example inclement weather) the boat captain and/or
8	Q And what does that mean, "bend with your knees"?	8	pilot may use their discretion and increase the
9	A Just like squatting with your knees and keeping	9	number of required personnel to perform the tasks
10	your back straight.	10	outlined in this document."
11	Q Does it mean you are supposed to spread your legs,	11	Have you heard that language before, Captain?
12	bend your knees so that when you lift anything you	12	A Yes, sir.
13	are lifting with your knees rather than your back?	13	Q Is that what you meant by policies about
14	A Yes, sir.	14	discretion in inclement weather, for example?
15	Q Is that to prevent back strains?	15	Q Is that what you meant by that?
16	A Yes, sir.	16	A Yes, sir.
17	Q And sprains?	17	MR. O'BRYAN: What number are we
18	A Yes, sir.	18	looking at?
19	Q Given the information that you got from	19	MR. RAYMOND MASSEY: Just for the
20	Mr. Dane -- from Dane, the mate, is it your view	20	record, that language is contained in Bates
21	that Mr. Ruddell violated a safety rule at	21	stamped Document 1795, among other places.
22	Marathon?	22	But the other places I think the wording is
23	A Yes, sir.	23	very much the same if not the same.
24	Q Did Mr. Ruddell admit that he bent from his waist?	24	BY MR. RAYMOND MASSEY:

	Page 58		Page 60
1	Q So, Captain, the boat captain and/or the crew, for example, if there is inclement weather they have discretion in whether or not to work in it or not?	1	Q So you could see about one barge length. But then because of the rainfall, if it was an inch an hour, it was raining hard enough so you couldn't see beyond that, it was obscured somewhat?
2	A Yes, sir.	2	A Yes, sir.
3	Q And what would be the determinant factors? Would safety be the determinant factor?	3	Q Is that what you meant by that?
4	A Yes, safety would be.	4	A Yes, sir.
5	Q And is that one of the reasons that you, yourself, and Marathon has the policy that you do not work out on steel decks if it is lightening?	5	Q There was also some mention about videos and taking videos off the vessel. Do you remember that testimony, sir?
6	A Yes.	6	A Yes, sir.
7	Q And on this day any lightening that was in the area occurred after the crew had already finished their job and were back inside the boat?	7	Q In the notes that were from Mr. Perkins' notes he indicated something about pulling Mike's videos or something. What was meant by that, in your judgment?
8	A Yes, sir.	8	A Pulling Mike's videos would have showed Ryan Ruddell getting off the boat and if he had been -- it could have showed if he was walking differently or whatever, if he was in pain.
9	Q Do you have a visualized picture of this tow in front of the vessel in your mind, Captain?	9	Q Is that because at Mike's facility, which is a marine facility there in the area, that they have -- they have cameras at their facility that would show their walkways?
10	A Yes, sir.	10	A Yes, sir. They have surveillance cameras.
11	Q If the last tie-off was done at the second coupling from the head, which would be the first coupling from the boat --	11	
12	A Yeah.	12	
13	Q -- would the cameras that are centered on the boat or alongside the boat even have been able to see	13	
14		14	
15		15	
16		16	
17		17	
18		18	
19		19	
20		20	
21		21	
22		22	
23		23	
24		24	
	Page 59		Page 61
1	any action of the crew at that coupling?	1	Q You don't have any knowledge one way or another if anybody ever actually pulled them off or looked at them or anything like that?
2	A No, sir. Due to the configuration of the barge, it be wouldn't have picked it up.	2	A No, sir.
3	Q All right. And what that means is, because of the way the barges are structured in connection with the gunnel, or the walkway, where the crew were in an area where the cameras would not be able to observe their actions; is that what you mean by that?	3	Q And the knowledge you would have about the wheelhouse videos, those are not CDs like Mr. O'Bryan was referencing to take in and out, those were videos that were broadcast back at the office for the port captains to take a look at live, or do you even know?
4	A Yes.	4	A It's about box that we can't get into which records the videos. I do not have access into getting it in there to pull up videos, but the port captains do. They can pull it up remotely from the office.
5	Q And is that the reason you were not able to visualize the crew as they were doing the work in that location?	5	Q Okay. But even if you had a video on this particular day at this particular time, the videos wouldn't have shown the operation where they were doing it the last place they were doing it before they got off the tow anyway?
6	A Yes, sir.	6	A No, sir. You wouldn't have been able to make it out or see it.
7	Q Now, in fairness, at certain times it was raining hard enough so your visibility was limited somewhat?	7	Q All right. Let's talk about the next morning after this incident on the 27th. You observe
8	A Yes, sir.	8	
9	Q And what is your estimate of how far you could see out from the wheelhouse at the most significant rainfall?	9	
10	A About a hundred -- 300 feet.	10	
11	Q About one barge length?	11	
12	A Yes, sir.	12	

	Page 62		Page 64
1	Mr. Ruddell that next morning; is that true, sir?	1	And those were working on big line boats as well?
2	A Yes, sir.	2	A Medium size.
3	Q He came up to do the stretching exercises that you	3	Q All right. How big is the Nashville? What kind
4	all do before you go out on watch?	4	of horsepower?
5	A Yes, sir, stretching and shift starter.	5	A It is a 150 foot long, 45 foot wide, and it is now
6	Q Okay. At that time or in close proximity after	6	5,000 horsepower.
7	that it got reported to you that there was some	7	Q And all of the boats at Mid-South, were they
8	kind of an incident?	8	5,000's or 5,600's or what were they?
9	A Yes, sir.	9	A No, sir. We had anywhere from 1,000 horsepower to
10	Q And that's when you began to fill out the report,	10	9,000.
11	some of which he have talked about here today?	11	Q And you worked on all of them?
12	A Yes, sir.	12	A Yes, sir.
13	Q And some of which were marked as exhibits here	13	Q What licenses do you have that are issued by the
14	today?	14	United States Coast Guard?
15	A Yes, sir.	15	A I have western rivers master's and I have inland.
16	Q At any time in any of that discussion did	16	Q You have inland operators and you have master's
17	Mr. Ruddell mention anything about any wires being	17	license?
18	bad?	18	A I have western river master; I have inland mate
19	A No, sir.	19	pilot license.
20	Q Or any problems with any wires?	20	Q Okay. And you are considered to be a master
21	A No, sir.	21	pilot?
22	Q Or any weather having anything to do whatsoever	22	A On the western rivers.
23	with any incident that occurred to him?	23	Q Yes. That is the highest license you can have on
24	A No, sir.	24	the western rivers?
	Page 63		Page 65
1	Q Or that he was feeling hurried or that anyone had	1	A Mine is only 500 gross ton. You can get up to
2	told him to hurry?	2	unlimited.
3	A No, sir.	3	Q Okay. If you are navigating on the Great Lakes,
4	Q Captain, you have been at Marathon for about eight	4	et cetera?
5	years. But before that you worked on the river?	5	A Well, the unlimited would be where you could
6	A Yes, sir.	6	operate like the Delta Queen or...
7	Q Who did you work with, sir?	7	Q I got you. Pleasure crafts, that sort of thing?
8	A I worked for Mid-South Towing.	8	A Gambling boats that used to run.
9	Q And Mid-South Towing is a towing company out of	9	Q Yeah. Is the practice that you and Marathon have
10	Tampa, Florida; is that where they are	10	concerning working under the weather conditions
11	headquartered or do you know?	11	that you have described, are they in accordance
12	A Yeah. That's TECO.	12	with the custom and practice generally in the
13	Q Okay.	13	marine business?
14	A Tampa Electric owned -- owned Mid-South Towing.	14	A Yes, sir.
15	Q I got you. So you worked on big line boats for	15	MR. RAYMOND MASSEY: Thank you,
16	Mid-South?	16	Captain. That's all I have.
17	A Yeah, for 22 years.	17	THE WITNESS: All right. Thank
18	Q So altogether, then, that is 30 years worth of	18	you.
19	wheelhouse experience?	19	MR. RAYMOND MASSEY: Do you want to
20	A A bit part, about half of it.	20	mark these as exhibits, Dennis?
21	Q Okay. So before Mid-South, who did you work for?	21	MR. O'BRYAN: Yeah. I've got a
22	A I worked for ago Eggert and Walker Towing.	22	couple more questions based on your cross.
23	Q Okay. Out of Paducah, Kentucky?	23	MR. RAYMOND MASSEY: Okay.
24	A Yes, sir.	24	=====

	Page 66		Page 68
1	RE-EXAMINATION		
2	BY MR. O'BRYAN:		
3	Q Now, Captain, defense counsel's asked you in a few	1	Q Now, had you observed lightening prior to this
4	different ways whether the crew members had to	2	6:45 time where the injury is said to have
5	hurry. Do you recall those questions?	3	occurred, what would you have done?
6	A Yes, sir.	4	A If I would have observed lightening at that point
7	Q Let's just call that the "hurry up factor," okay?	5	in time, I would have stopped everything and
8	A Okay.	6	pulled my crew off the tow.
9	Q And the hurry up factor was one of the things that	7	Q And the same with the bad rain, correct?
10	you discussed with defense counsel in this hour	8	MR. RAYMOND MASSEY: Object to the
11	and a half meeting that you had with them	9	form of the question. It is vague and
12	yesterday?	10	ambiguous. Go ahead, sir.
13	A Yes, sir.	11	A I've worked in heavy rain; they've worked in heavy
14	Q And you recognize that if a crew is being hurried	12	rain. That's just part of the job.
15	that that can increase the chances of injury,	13	Q I'm just talking about, though, you indicated
16	isn't that correct?	14	earlier that lightening and, you know, really bad
17	A Yes, sir.	15	rain could cause you to suspend operation. Do you
18	Q And that can increase the chances of the crew	16	recall that? Or you can clarify it if you want.
19	taking shortcuts to get their work done if they	17	A Okay. When you are talking about real bad rain
20	are being unnecessarily hurried, isn't that	18	for me to stop, that means I cannot use my radars,
21	correct?	19	they're blacked out and stuff, so I have to stop
22	A That would be up to them, if they take shortcuts.	20	because I cannot navigate.
23	Q I know. But if they are being hurried up, I mean,	21	Q What about rain and wind so bad that it is blowing
24	that could increase the likelihood of that?	22	crews across the barge; would that qualify?
		23	A Yes, sir.
		24	Q All right. Now, Mr. Ruddell said that there was
	Page 67		Page 69
1	MR. RAYMOND MASSEY: Let me object	1	no rain gear that would fit him on the boat; would
2	to the form of the question.	2	you agree, disagree, or do not know?
3	Q Do you agree with that?	3	A That, I would not know. That's up to the mate to
4	MR. RAYMOND MASSEY: That's calling	4	make sure the proper rain gear is on the boat for
5	for a hypothetical, I think.	5	crew.
6	Q Can you answer it?	6	Q Did Mr. Ruddell tell you that his injury occurred
7	A I don't agree with that. I mean, there's a	7	while he was lifting a wire -- lifting a wire?
8	difference between just being totally rushed or	8	A Yes. That's what he told me.
9	picking up the pace just a little bit.	9	Q I don't know if you can hear me, but I'm going to
10	Q Okay. Let's say being rushed. How can that	10	call on the phone. All right. I got you now.
11	increase the chances of injury?	11	Okay. Now, can you stand up and show me the
12	A That could increase it some, yes.	12	proper way that you're supposed to do lifting with
13	Q In what way?	13	your legs that you are talking about?
14	A If they get in too big of a hurry they could, you	14	A (Witness so complies).
15	know, slip, trip over something or get in too big	15	MR. RAYMOND MASSEY: Let the record
16	of a rush they could get hurts.	16	reflect that the Captain bent his knees, kept
17	Q Or just do things they shouldn't know how to do?	17	his back straight, and raised straight up.
18	A Once again, I cannot control what the other person	18	MR. O'BRYAN: The picture shows
19	does.	19	what it shows.
20	Q Okay. Now, have you observed -- okay. So you	20	MR. RAYMOND MASSEY: Yeah, but it
21	indicated earlier when I was asking you some	21	is not a video deposition. So you didn't
22	questions with lightening or real bad rain, that	22	arrange for a video deposition, so you won't
23	you would suspend operations, right?	23	be able to see it, so somebody needs to
24	A Yes, sir.	24	describe it. So I have just described it.

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1	Let the record show the Captain	1	A Yes, sir.
2	bent his knees, kept his back straight, went	2	Q And as a deckhand, Mr. Ruddell is pretty much at
3	straight down and with his arms lifted.	3	the bottom of the food chain in terms of taking --
4	BY MR. O'BRYAN:	4	or giving orders, is that correct?
5	Q And your legs are pretty much together as much as	5	MR. RAYMOND MASSEY: We couldn't
6	you can, right?	6	hear. You have to re-ask that.
7	MR. RAYMOND MASSEY: No. In fact,	7	Q Well, what is the hier -- just tell me the
8	they weren't together.	8	hierarchy with regard to Mr. Ruddell.
9	A Actually, they are separate just a little bit.	9	A I'm the captain, I'm the leader of the vessel, and
10	Q Just a little bit?	10	Ryan is the deckhand, which is the lowest part of
11	MR. RAYMOND MASSEY: Shoulder	11	the chain of command.
12	width. If it had been on video, it would	12	Q All right. Now, the cameras and videos that we're
13	show it is at least at shoulder width.	13	talking about here, they would have possibly
14	MR. O'BRYAN: Right.	14	recorded when lightening was visible by the pilot
15	MR. RAYMOND MASSEY: Which is the	15	house, correct?
16	proper way.	16	A Yes, sir.
17	BY MR. O'BRYAN:	17	Q Now, how many barge lengths in front of you was
18	Q Now, in order to squat like that you can't have	18	Mr. Ruddell when this was occurring?
19	your feet too far apart, isn't that correct?	19	A What was occurring, sir?
20	A Yeah. If you put them way, way far apart, you	20	Q When he was lifting the wire.
21	don't want to lift like that.	21	A That was one barge length out, 300 feet.
22	Q Now, I was looking at this thing in seventeen --	22	Q Now, you have just told defense counsel that you
23	number 1795, this policy statement or whatever you	23	could see one barge length out, correct?
24	want to call it.	24	A The barge, yes.
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1	And that doesn't have anything to do with you	1	Q But in the document you filled out that we've
2	suspending operations under lightening or those	2	already talked about a little bit you said that
3	type of conditions; that has to do with assigning	3	your visibility -- you couldn't see them in part
4	personnel to perform a task, isn't that correct?	4	because of the severity of the rain that was
5	A Assigning more people, yes.	5	coming down, isn't that correct?
6	Q You're cutting out. But that doesn't have	6	A Due to the rain was part of it, yes.
7	anything to do with you suspending operations	7	Q So which way is it, you could see out to where he
8	under lightening conditions, is that correct?	8	was or that length or you could not?
9	MR. RAYMOND MASSEY: I think his	9	A I could see out 300 foot to the edge of the
10	answer was "assigning" -- the court reporter	10	coupling. But where Mr. Ruddell was at I could
11	will read it back.	11	not see him because he was in behind the trunk of
12	THE REPORTER: The answer was:	12	the barge and the header pipes.
13	"Assigning more people, yes."	13	Q But that's not what you put in your witness
14	MR. RAYMOND MASSEY: Did you hear	14	statement, is it?
15	that, Dennis?	15	MR. RAYMOND MASSEY: Which one do
16	MR. O'BRYAN: Right. Yeah, yeah.	16	you want him to look at?
17	The problem I'm having is it is breaking up a	17	MR. O'BRYAN: Number 11.
18	little bit.	18	MR. RAYMOND MASSEY: Bates stamped
19	BY MR. O'BRYAN:	19	11, you mean?
20	Q Okay. And as the Captain you are the person in	20	MR. O'BRYAN: Yeah. Sorry.
21	command of your vessel, correct? You are the top	21	MR. RAYMOND MASSEY: That's all
22	of the food chain?	22	right.
23	A Yes, sir.	23	(Witness reviews document)
24	Q And the safety of the crew is your responsibility?	24	BY MR. O'BRYAN:



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